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SENATE BILL 110

**49TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2009**

INTRODUCED BY

Pete Campos

AN ACT

RELATING TO LOCAL GOVERNMENT; AMENDING SECTIONS OF THE PUBLIC  
IMPROVEMENT DISTRICT ACT TO PROVIDE FOR OWNERS AND RESIDENTS TO  
ELECT A DISTRICT BOARD AND TO PROVIDE FOR LIMITATION OF  
PROPERTY TAX LEVIES TO PAY DEBT SERVICE ON BONDS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 5-11-2 NMSA 1978 (being Laws 2001,  
Chapter 305, Section 2) is amended to read:

"5-11-2. DEFINITIONS.--As used in the Public Improvement  
District Act:

A. "clerk" means the clerk of the municipality or  
county, or any person appointed by the district board to be the  
district clerk pursuant to Section [~~6 of the Public Improvement  
District Act~~] 5-11-6 NMSA 1978;

B. "county" means a county that forms a public

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1 improvement district pursuant to the Public Improvement  
2 District Act in an unincorporated area or in an incorporated  
3 area with the municipality's consent;

4 C. "debt service" means the principal of, interest  
5 on and premium, if any, on the bonds, when due, whether at  
6 maturity or prior redemption; ~~and~~ the fees and costs of  
7 registrars, trustees, paying agents or other agents necessary  
8 to handle the bonds; and the costs of credit enhancement or  
9 liquidity support;

10 D. "development agreement" means an agreement  
11 between a property owner or developer and the county, ~~or~~  
12 municipality or district, concerning the improvement of  
13 specific property within the district, which agreement may be  
14 used to establish obligations of the owner or developer, the  
15 county or municipality or the district concerning the zoning,  
16 subdivision, improvement, impact fees, financial  
17 responsibilities and other matters relating to the development,  
18 improvement and use of real property within a district;

19 E. "district" means a public improvement district  
20 formed pursuant to the Public Improvement District Act by a  
21 municipality or by a county in an unincorporated area or in an  
22 incorporated area with the municipality's consent;

23 F. "district board" means the board of directors of  
24 the district, which shall be ~~comprised~~ composed of members of  
25 the governing body, ex officio, or, at the option of the

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1 governing body, five directors appointed by the governing body  
2 of the municipality or county in which the district is located,  
3 until replaced by elected directors, which shall occur not  
4 later than six years after the date on which the resolution  
5 establishing the district is enacted, as provided in Section [9  
6 ~~of the Public Improvement District Act~~] 5-11-9 NMSA 1978;

7 G. "election" means an election held in compliance  
8 with the provisions of Sections [~~6 and 7 of the Public~~  
9 ~~Improvement District Act~~] 5-11-6 and 5-11-7 NMSA 1978;

10 H. "enhanced services" means public services  
11 provided by a municipality or county within the district at a  
12 higher level or to a greater degree than otherwise available to  
13 the land located in the district from the municipality or  
14 county, including such services as public safety, fire  
15 protection, street or sidewalk cleaning or landscape  
16 maintenance in public areas. "Enhanced services" does not  
17 include the basic operation and maintenance related to  
18 infrastructure improvements financed by the district pursuant  
19 to the Public Improvement District Act;

20 I. "general plan" means the general plan described  
21 in Section [~~3 of the Public Improvement District Act~~] 5-11-3  
22 NMSA 1978, as the plan may be amended from time to time;

23 J. "governing body" means the body or board that by  
24 law is constituted as the governing body of the municipality or  
25 county in which the public improvement district is located;

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1           K. "municipality" means an incorporated city,  
2 village or town;

3           L. "owner" means:

4                 (1) the person who is listed as the owner of  
5 real property in the district on the current property tax  
6 assessment roll in effect at the time that the action,  
7 proceeding, hearing or election has begun. For purposes of  
8 voting in elections held pursuant to the Public Improvement  
9 District Act, when the owner of record title is a married  
10 person, only one spouse in whose name title is held may vote at  
11 such election. Where record title is held in more than one  
12 name, each owner may vote the number of fractions of acres  
13 represented by ~~[his]~~ the owner's legal interest or  
14 proportionate share of and in the lands within the district;

15                 (2) the administrator or executor of an estate  
16 holding record title to land within the district;

17                 (3) the guardian of a minor or incompetent  
18 person holding record title to land within the district,  
19 appointed and qualified under the laws of the state;

20                 (4) an officer of a corporation holding record  
21 title to land within the district, which officer has been  
22 authorized by resolution of the corporation's board of  
23 directors to act with respect to such land;

24                 (5) the general partner of a partnership  
25 holding record title to land within the district; ~~[and]~~

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1 (6) the trustee of a trust holding record  
2 title to land within the district; or

3 (7) the manager or member of a limited  
4 liability company holding record title to land within the  
5 district who has been authorized to represent the company;

6 M. "public infrastructure improvements" means all  
7 improvements listed in this subsection and includes both  
8 on-site improvements and off-site improvements that directly or  
9 indirectly benefit the district. Such improvements include  
10 necessary or incidental work, whether newly constructed,  
11 renovated or existing, and all necessary or desirable  
12 appurtenances. "Public infrastructure improvements" includes:

13 (1) sanitary sewage systems, including  
14 collection, transport, storage, treatment, dispersal, effluent  
15 use and discharge;

16 (2) drainage and flood control systems,  
17 including collection, transport, diversion, storage, detention,  
18 retention, dispersal, use and discharge;

19 (3) water systems for domestic, commercial,  
20 office, hotel or motel, industrial, irrigation, municipal or  
21 fire protection purposes, including production, collection,  
22 storage, treatment, transport, delivery, connection and  
23 dispersal;

24 (4) highways, streets, roadways, bridges,  
25 crossing structures and parking facilities, including all areas

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1 for vehicular use for travel, ingress, egress and parking;

2 (5) trails and areas for pedestrian,  
3 equestrian, bicycle or other nonmotor vehicle use for travel,  
4 ingress, egress and parking;

5 (6) pedestrian malls, parks, recreational  
6 facilities and open space areas for the use of members of the  
7 public for entertainment, assembly and recreation;

8 (7) landscaping, including earthworks,  
9 structures, lakes and other water features, plants, trees and  
10 related water delivery systems;

11 (8) public buildings, public safety facilities  
12 and fire protection and police facilities;

13 (9) electrical generation, transmission and  
14 distribution facilities;

15 (10) natural gas distribution facilities;

16 (11) lighting systems;

17 (12) cable or other telecommunications lines  
18 and related equipment;

19 (13) traffic control systems and devices,  
20 including signals, controls, markings and signage;

21 (14) school sites and facilities with the  
22 consent of the governing board of the public school district  
23 for which the site or facility is to be acquired, constructed  
24 or renovated;

25 (15) library and other public educational or

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1 cultural facilities;

2 (16) equipment, vehicles, furnishings and  
3 other personalty related to the items listed in this  
4 subsection; and

5 (17) inspection, construction management and  
6 program management costs;

7 N. "public infrastructure purpose" means:

8 (1) planning, design, engineering,  
9 construction, acquisition or installation of public  
10 infrastructure, including the costs of applications, impact  
11 fees and other fees, permits and approvals related to the  
12 construction, acquisition or installation of such  
13 infrastructure;

14 (2) acquiring, converting, renovating or  
15 improving existing facilities for public infrastructure,  
16 including facilities owned, leased or installed by an owner;

17 (3) acquiring interests in real property or  
18 water rights for public infrastructure, including interests of  
19 an owner;

20 (4) establishing, maintaining and replenishing  
21 reserves in order to secure payment of debt service on bonds;

22 (5) funding and paying from bond proceeds  
23 interest accruing on bonds for a period not to exceed three  
24 years from their date of issuance;

25 (6) funding and paying from bond proceeds

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1 fiscal, financial and legal consultant fees, trustee fees,  
2 discount fees, district formation and election costs and all  
3 costs of issuance of bonds issued pursuant to the Public  
4 Improvement District Act, including, but not limited to, fees  
5 and costs for bond counsel, financial advisors, consultants and  
6 underwriters, costs of obtaining credit ratings, bond insurance  
7 premiums, fees for letters of credit and other credit  
8 enhancement costs and printing costs;

9 (7) providing for the timely payment of debt  
10 service on bonds or other indebtedness of the district;

11 (8) refinancing any outstanding bonds with new  
12 bonds, including through the formation of a new public  
13 improvement district; and

14 (9) incurring expenses of the district  
15 incident to and reasonably necessary to carry out the purposes  
16 specified in this subsection;

17 O. "resident qualified elector" means a person who  
18 resides within the boundaries of a district or proposed  
19 district and who is qualified to vote in the general elections  
20 held in the state pursuant to Section 1-1-4 NMSA 1978;

21 P. "special levy" means a levy imposed against real  
22 property within a district that may be apportioned according to  
23 direct or indirect benefits conferred upon affected real  
24 property, as well as acreage, front footage, the cost of  
25 providing public infrastructure for affected real property, or

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1 other reasonable method, as determined by the governing body or  
2 district board, as applicable; and

3 Q. "treasurer" means the treasurer of the governing  
4 body or the person appointed by the district board as the  
5 district treasurer pursuant to Section [~~6 of the Public~~  
6 ~~Improvement District Act~~] 5-11-6 NMSA 1978."

7 Section 2. Section 5-11-9 NMSA 1978 (being Laws 2001,  
8 Chapter 305, Section 9) is amended to read:

9 "5-11-9. APPOINTMENT OF DIRECTORS--QUALIFICATIONS--  
10 TERMS--RESUMPTION OF GOVERNANCE BY GOVERNING BODY.--

11 A. The governing body, at its option, may authorize  
12 the appointment of a separate district board. In the case of  
13 an appointed district board, three of the appointed directors  
14 shall serve an initial term of six years. Two of the appointed  
15 directors shall serve an initial term of four years. The  
16 resolution forming the district shall state which directors  
17 shall serve four-year terms and which shall serve six-year  
18 terms. If a vacancy occurs on the district board because of  
19 death, resignation or inability of the director to discharge  
20 the duties of director, the governing body shall appoint a  
21 director to fill the vacancy, who shall hold office for the  
22 remainder of the unexpired term until [~~his~~] a successor is  
23 appointed or elected.

24 B. A director may be a director of more than one  
25 district.

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1 C. At the end of the appointed directors' initial  
2 term, the governing body shall resume governance of the  
3 district as its board or, at its option, shall hold an election  
4 of new directors by majority vote of the [~~residents~~] resident  
5 qualified electors and owners."

6 Section 3. Section 5-11-19 NMSA 1978 (being Laws 2001,  
7 Chapter 305, Section 19) is amended to read:

8 "5-11-19. GENERAL OBLIGATION BONDS--TAX LEVY--  
9 EXCEPTION.--

10 A. At any time after the hearing on formation of  
11 the district, the district board, or, if before formation, the  
12 governing body may from time to time order and call a general  
13 obligation bond election to submit to the owners and resident  
14 qualified electors the question of authorizing the district to  
15 issue general obligation bonds of the district to provide money  
16 for any public infrastructure purposes consistent with the  
17 general plan. The question shall include authorization for a  
18 levy, including a limitation on the levy, of a property tax to  
19 pay debt service on the bonds. The election may be held in  
20 conjunction with the formation election.

21 B. If general obligation bonds are approved at an  
22 election, the district board may issue and sell general  
23 obligation bonds of the district.

24 C. Bonds may be sold in a public offering or in a  
25 negotiated sale.

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1           D. After the bonds are issued, the district board  
2 shall enter in its minutes a record of the bonds sold and their  
3 numbers and dates and shall annually levy and cause a property  
4 tax to be collected, at the same time and in the same manner as  
5 other property taxes are levied and collected on all taxable  
6 property in the district, sufficient, together with any money  
7 from the sources described in Section [~~17 of the Public~~  
8 ~~Improvement District Act~~] 5-11-17 NMSA 1978 to pay debt service  
9 on the bonds when due. Money derived from the levy of property  
10 taxes that are pledged to pay the debt service on the bonds  
11 shall be kept separately from other funds of the district.  
12 Property tax revenues not pledged to pay debt service on bonds  
13 may be used to pay other costs of the district, including costs  
14 of formation, administration, operation and maintenance,  
15 services or enhanced services. A district's levy of property  
16 taxes shall constitute a lien on all taxable property within  
17 the district, including, without limitation, all leased  
18 property or improvements to leased land, which shall be subject  
19 to foreclosure in the same manner as other property tax liens  
20 under the laws of this state. The lien shall include  
21 delinquencies and interest thereon at a rate not to exceed ten  
22 percent per year, the actual costs of foreclosure and any other  
23 costs of the district resulting from the delinquency. The  
24 proceeds of any foreclosure sale shall be deposited in the  
25 special bond fund for payment of any obligations secured

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1 thereby.

2 E. Subject to the election requirements of this  
3 section, a district may issue general obligation bonds at such  
4 times and in such amounts as the district deems appropriate to  
5 carry out a project or projects in phases.

6 F. Pursuant to this section, the district may issue  
7 and sell refunding bonds to refund general obligation bonds of  
8 the district authorized by the Public Improvement District Act.  
9 No election is required in connection with the issuance and  
10 sale of refunding bonds. Refunding bonds issued pursuant to  
11 this section shall have a final maturity date no later than the  
12 final maturity date of the bonds being refunded."

13 Section 4. Section 5-11-26 NMSA 1978 (being Laws 2001,  
14 Chapter 305, Section 26) is amended to read:

15 "5-11-26. CUMULATIVE AUTHORITY.--The Public Improvement  
16 District Act shall be deemed to provide an additional and  
17 alternative method for the doing of things authorized by that  
18 act and shall be regarded as supplemental and additional to  
19 powers conferred by other laws and shall not be regarded as in  
20 derogation of any powers now existing; provided that the  
21 issuance of bonds under the provisions of the Public  
22 Improvement District Act need not comply with the requirements  
23 of any other law applicable to the issuance of bonds, except  
24 the Public Securities Limitation of Action Act, which shall  
25 apply."

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